

**COMMONWEALTH OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO**

FCC's Triennial Review Order)	Case Number JRT-2003-CCG-0004
)	
)	Re: Review of High Capacity Business
)	Customer Local Circuit Switching
)	

**REBUTTAL TESTIMONY OF
DAVID L. BOGATY
ON BEHALF OF WORLDNET TELECOMMUNICATIONS, INC.**

1 **Q. What is your name and business address?**

2
3 A. My name is David L. Bogaty. I am the founder and president of WorldNet
4 Telecommunications, Inc. My business address is Plaza Caparra, Ave Roosevelt, Suite
5 206, San Juan, Puerto Rico 00922.

6
7 **Q. Have you testified previously in this proceeding?**

8
9 A. Yes. I provided direct testimony regarding some of the significant operational and
10 economic barriers existing in Puerto Rico markets.

11
12 **Q. What is the purpose of your current testimony?**

13
14 A. The purpose of my current testimony is to rebut the direct testimony offered in this
15 proceeding on behalf of Puerto Rico Telephone Company ("PRTC") by Mr. Roberto
16 Correa and Mr. Jeffrey W. Reynolds. In short, I believe that both of these witnesses have
17 provided the Board with a very distorted view of the facts and issues before the Board in
18 this case.

19
20 **Q. Where would you like to begin?**

21
22 A. I would like to begin with Mr. Reynolds' contention that the FCC has already examined
23 the high capacity switching market in Puerto Rico and found no impairment.¹ In his
24 testimony, it appears that Mr. Reynolds is attempting to suggest that the FCC's finding
25 settles the question of impairment in Puerto Rico and leaves nothing for the Board to
26 decide in this proceeding. Mr. Reynolds' suggestion is fundamentally wrong. Although
27 the FCC found no evidence of impairment on a national basis in the Triennial Review

¹ See Reynolds Direct at 3 (lines 6-14), 4 (lines 1-10) & 6 (lines 5-8) ("As the [FCC] found, there is no impairment in Puerto Rico.").

1 order, it expressly found that its finding could be rebutted by independent state
2 commission determinations.
3

4 **Q. Did the FCC give any special consideration to the market in Puerto Rico in making**
5 **its national finding of no impairment as Mr. Reynolds seems to imply?**
6

7 A. No. The FCC did not even mention Puerto Rico in the Triennial Review order. In this
8 regard, I think Mr. Reynolds' testimony is very misleading when it asserts that the FCC
9 specifically found no impairment in Puerto Rico. The FCC's focus was national, not on
10 Puerto Rico or any other individual state or jurisdiction. More importantly, the FCC
11 found that state commissions (not the FCC) were in the best position to question its
12 national finding on a more granular market-by-market basis. That is what the Board is
13 doing here. Mr. Reynolds completely confuses the issue when he suggests that the FCC's
14 national finding should influence the Board's independent analysis.
15

16 **Q. Do you agree with Mr. Reynolds that the FCC specifically rejected WorldNet**
17 **arguments about how to address the availability of high capacity switching in**
18 **Puerto Rico?**
19

20 A. No. As I said earlier, the FCC's focus was national, not on any individual or specific
21 state or jurisdiction. Accordingly, I think that Mr. Reynolds again has misrepresented
22 what the FCC actually found. It also appears that Mr. Reynolds did not read WorldNet's
23 FCC comments very carefully either. In those comments WorldNet asked the FCC to
24 provide general guidance on UNE availability, but leave the ultimate market-by-market
25 determination to the Board.² That is exactly what the FCC did.
26

27 **Q. Mr. Reynolds also testified that there are no operational barriers in Puerto Rico**
28 **because PRTC is "ready, willing, and able" to provide UNE loops, collocation, and**
29 **cross-connects. Do you agree with Mr. Reynolds?**
30

31 A. No. As Mr. Reynolds acknowledged, PRTC has never successfully completed any of
32 these activities. With no experience to guide the Board, PRTC has essentially been
33 relegated to a "trust us" argument. The FCC, however, has asked the Board to evaluate
34 actual performance, not promised performance. Moreover, as I explained in my direct
35 testimony, nothing in PRTC's abysmal history of service performance to its competitors
36 justifies the blind leap that PRTC is now asking the Board to make here. Finally, as a
37 practical matter, I would note that Mr. Reynolds claims that PRTC is ready to provide
38 UNE loops, collocation, and cross-connects, but does not say how PRTC is ready or if he
39 even knows what PRTC has done to become ready.
40

² See Reynolds Direct at Exhibit 1 (WorldNet Letter to the FCC dated January 6, 2003) ("[T]he [FCC] should not attempt to provide detailed guidelines as to which UNEs should be retained in each market. Rather, the [FCC] should establish general guidelines and allow the state PUCs to address the details of UNE availability based upon their experience and expertise in the particular market.").

1 **Q. Mr. Correa also testified that PRTC is “ready, willing, and able” to perform. Does**
2 **he provide any better support for this contention than Mr. Reynolds?**

3
4 A. No. The only significant difference in Mr. Correa’s testimony is that he purports to
5 identify the administrative processes that PRTC has allegedly developed to provide
6 stand-alone UNE loops, collocation, and cross-connects.³

7
8 As an initial matter, I would note that Mr. Correa is a network engineer. Accordingly, I
9 do not quite understand why he is qualified or even has a basis to know what PRTC’s
10 administrative procedures for these activities are. In my six years working with PRTC to
11 develop processes and procedures for PRTC wholesale services, I have never once met
12 with, spoken to, or seen a document from Mr. Correa.

13
14 Nevertheless, the processes that Mr. Correa identifies do not in any way show that PRTC
15 is “ready, willing, and able” to provide UNE loops, collocation, or cross-connects. The
16 processes described are extremely general and do not address a host of important
17 provisioning issues with which PRTC historically has had substantial and crippling
18 problems (e.g., billing). Similarly, the processes are untested – a fact that even Mr.
19 Correa acknowledges will “not surprising[ly]” generate delay and disputes until PRTC
20 has obtained at least some experience with them.⁴

21
22 Simply put, I do not believe that the Board should or can bank the future of competition
23 in Puerto Rico on a very brief and (hopefully) incomplete description of PRTC plans to
24 do things that it has never done before.

25
26 **Q. Do you see any other problems in Mr. Reynolds’ or Mr. Correa’s contention that**
27 **PRTC is “ready, willing, and able” to perform?**

28
29 A. Yes. With regard to collocation, Mr. Reynolds bases his contention on the mere
30 availability of collocation space in PRTC central offices.⁵ To begin with, I do not know
31 if his testimony is accurate. As I explained in my direct testimony, the list of central
32 offices that PRTC is required by law to include on its website says that there is no space
33 available in any of PRTC’s central offices. Beyond this, however, Mr. Reynolds is
34 wrong when he relies on the mere availability of space. In the Triennial Review order,
35 the FCC instructs the Board to look not just to collocation space availability, but also to
36 difficulties in obtaining that space and delays in provisioning by the ILEC.⁶

³ See Correa Direct at 3 (lines 4-23), 4 (lines 1-2), 7 (lines 14-21) & 9 (lines 16-24).

⁴ See Correa Direct at 4 (lines 15-16).

⁵ See Reynolds Direct at 6 (lines 11-20) (“Because collocation space is available, CLECs do not face impairment.”).

⁶ See Triennial Review Order at ¶ 456 (“In particular, state commissions must consider whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects in an incumbent’s wire center, are making entry uneconomic for competitive LECs.”).

1
2 **Q. Do you disagree with Mr. Reynolds or Mr. Correa on any other contentions that**
3 **they make about PRTC's collocation abilities?**

4
5 A. Yes. Mr. Correa contends that PRTC is providing collocation "apace" and that it has met
6 all of its interconnection agreement deadlines in dealing with Centennial collocation
7 requests.⁷ That is not the case according to Centennial. In its collocation complaint filed
8 with the Board earlier this year, Centennial reported that PRTC had failed to meet a July
9 2003 interconnection agreement deadline for a number of Centennial collocation orders
10 and that other Centennial collocation orders have been pending with PRTC for over three
11 years.
12

13 I would also note that despite a settlement of Centennial's complaint, Centennial reports
14 in its responses to the Board's interrogatories that the process provided by PRTC is still
15 "highly problematic" and that "many issues remain."⁸
16

17 **Q. Both of PRTC's witnesses seem to downplay Centennial's collocation complaint,**
18 **noting that PRTC was able to settle the complaint. Do you believe that this was**
19 **appropriate?**
20

21 A. No, The complaint is a plain example of PRTC saying that it was ready to do something
22 for its competitors and then failing to do it. PRTC has made collocation commitments to
23 competitors in its interconnection agreements for years. Yet, when a competitor finally
24 held PRTC to that commitment, PRTC was unprepared to respond and, ultimately, failed
25 to perform as it promised.
26

27 Centennial's collocation complaint is not an isolated example of this PRTC approach to
28 competition. As I noted in my direct testimony, PRTC also forced WorldNet to file a
29 complaint against it with regard to UNE-P. Mr. Reynolds and Mr. Correa also try to
30 downplay this complaint. It is, however, another plain example of an instance where
31 PRTC promised one thing and did another. Indeed, in exchange for a bundle of
32 concession in arbitrating the parties' interconnection agreement, WorldNet agreed to give
33 PRTC almost an additional year to prepare for providing UNE-P. Several months later,
34 PRTC had essentially done nothing to prepare to meet its contract commitment. For
35 months of the implementation process, WorldNet repeatedly expressed its concern that
36 PRTC was moving too slowly and would not be ready. PRTC ignored these concerns.
37 Further, hoping to avoid a costly battle as PRTC's deadline to provide UNE-P
38 approached, WorldNet expressed that it would file a complaint if PRTC was not
39 prepared. PRTC ignored this as well. Only when WorldNet actually filed its complaint
40 did PRTC start its preparations, leaving WorldNet with an ad hoc, piecemeal UNE-P
41 ordering, provisioning, and billing process that, to this day, PRTC still has not corrected
42 to satisfy everything that it promised to WorldNet.
43

⁷ See Correa Direct at 5 (lines 11-13).

⁸ See Response of Centennial Puerto Rico License Corp. to the Board's Information Request at 5-6.

1 Finally, Mr. Correa and Mr. Reynolds seem to shrug off competitor complaints as
2 inconsequential bumps in the road that have no competitive significance. This is simply
3 not true. In WorldNet's case, PRTC's pattern of acting only when forced to act has cost
4 WorldNet hundreds of thousands of dollars in administrative and legal costs.
5 Additionally, the piecemeal, inconsistent, and usually manual procedures thrown together
6 by PRTC have significantly stunted WorldNet growth by making it nearly impossible and
7 cost prohibitive to manage large numbers of customers. Competition in Puerto Rico
8 simply cannot reach its full potential when competitors like WorldNet are routinely
9 forced to devote a significant portion of their limited resources to make PRTC do what it
10 has already promised to do. In the past, "ready, willing, and able" for PRTC has meant
11 little more than the start of another costly series of struggles through inconsistent, ad hoc,
12 and mostly manual PRTC processes and procedures, empty PRTC performance
13 commitments, and complaint filings with the Board. Mr. Reynolds and Mr. Correa have
14 offered nothing to suggest that the case will be any different here.

15
16 **Q. Do you disagree with anything that Mr. Correa or Mr. Reynolds have asserted**
17 **about PRTC's ability to provide UNE loops?**

18
19 A. Yes. Both PRTC witnesses indicate that PRTC has gained experience in providing UNE
20 loops by providing UNE-P circuits to WorldNet.⁹ In doing so, I do not believe that they
21 are comparing apples to apples. In particular, in looking to ILEC provisioning of UNE
22 loops, the FCC was focusing on the provision of stand-alone UNE loops, not UNE loops
23 as part of a UNE-P circuit. Among other things, the provision of stand-alone UNE loops
24 involves coordinating the cutover of loops to a competitor's collocation or switch. PRTC
25 has not done any of these things in providing UNE-P circuits to WorldNet or any other
26 competitor. Indeed, perhaps the only significance that PRTC's provision of UNE-P has
27 with regard to providing stand-alone UNE loops is billing. And, as I explained in my
28 direct testimony, PRTC has consistently failed to bill (and represented that it is currently
29 unable to bill) WorldNet accurately or properly in providing UNE-P. PRTC's UNE-P
30 experience does not support Mr. Correa's or Mr. Reynolds' claim that PRTC is ready to
31 provide stand-alone UNE loops. And, if they truly believe that it does, they have only
32 proven further how far away PRTC is from being "ready, willing, and able" to provide
33 stand-alone UNE loops.

34
35 **Q. Do you see any problems with Mr. Correa's or Mr. Reynolds' testimony about**
36 **PRTC's ability to provide cross-connects?**

37
38 A. Yes. Simply put, they have not provided anything to show that PRTC is, in fact, "ready,
39 willing, and able" to provide cross-connects. In particular, all that the PRTC witnesses
40 have said is that PRTC has not provided any cross-connects and that it has made up a
41 process that Mr. Correa, a network engineer, thinks will work. In other words, "trust us."
42 PRTC has done nothing in the past to warrant this trust.

43
44 **Q. What is your overall impression of Mr. Correa's and Mr. Reynolds' testimony?**
45

⁹ See Reynolds Direct at 6 (lines 12-15); Correa Direct at 8 (lines 1-3).

1 A. I believe that it is a valiant, although misplaced attempt to fight an uphill battle. The
2 FCC has identified three services that are critical to competitive facilities deployment.
3 PRTC has no successful experience providing any of them. It's only attempt to provide
4 one of them (i.e., collocation) resulted in a formal Board complaint. And, its track record
5 in providing other services and facilities to its competitors is perhaps one of the worst in
6 all of the jurisdictions that will be challenging the FCC's no impairment finding. Simply
7 put, PRTC has not successfully provided a single stand-alone UNE loop, collocation, or
8 cross-connect and it has provided no credible or definitive evidence for the Board to
9 conclude that it suddenly can. The Board should petition the FCC for a waiver of its no
10 impairment finding.
11

12 **Q. Does this conclude your testimony?**
13

14 A. Yes, although I reserve the right to amend or supplement it based on discovery
15 information that WorldNet has yet to receive from PRTC and other parties in this
16 proceeding.